

**JUL 27 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FERNANDO LOPEZ-GONZALEZ,

Defendant - Appellant.

No. 05-16110

D.C. No. CV-04-06141-REC  
CR-F-03-5136-REC

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Robert E. Coyle, Senior District Judge, Presiding

Submitted July 24, 2006\*\*

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Federal prisoner Fernando Lopez-Gonzalez appeals from the district court's judgment denying his 28 U.S.C. § 2255 motion. We review de novo the denial of a § 2255 motion and for clear error the district court's findings of fact for clear error. *United States v. Alvarez-Tautimez*, 160 F.3d 573, 575 (9th Cir. 1998). We

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

Lopez-Gonzalez contends that he received ineffective assistance of counsel when counsel failed to file a notice of appeal after he requested that she do so. We disagree.

The district court held an evidentiary hearing and credited the testimony of counsel over the testimony of Lopez-Gonzalez. The district court found that counsel consulted with Lopez-Gonzalez about his appellate rights; he indicated that he did not wish to appeal unless his sentence exceeded the sentencing guidelines range; and after sentence was imposed, Lopez-Gonzalez never alerted counsel that he had changed his mind. Under the clear error standard, “[i]f the district court’s account of the evidence is plausible in light of the record reviewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently.” *Anderson v. City of Bessemer City*, 470 U.S. 564, 573-574 (1985). Based on the record, the district court’s conclusion was not clearly erroneous.

**AFFIRMED.**